

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

DAVID SMOTHERMON,

*Defendant.*

Case No. 19 Cr. 382 (AKH)

**DECLARATION OF  
GEORGE D. MURPHY, JR.**

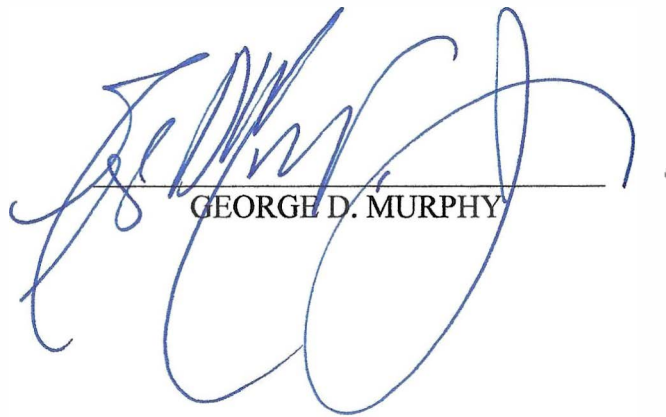
I, GEORGE D. MURPHY, JR., pursuant to 28 U.S.C. § 1746, hereby declare as follow:

1. I am counsel to Defendant David Smothermon in this action. I submit this declaration in support of Mr. Smothermon’s Motion to Dismiss the Indictment.
2. Although the superseding indictment (Dkt. 96) does not specify precisely which “discretionary bonus” is the supposed object of the alleged fraud, on June 14, 2024 the government confirmed via email that the “discretionary bonus” at issue is the 2015 bonus that Smothermon received in May 2016.
3. In response to the return of the superseding indictment, on June 23, 2024, I requested that the government identify any alleged false statements that occurred *before* May 2016. Although the government informally identified three pre-May 2016 contracts that it apparently alleges were inaccurately entered into the accounting system, any alleged material false statements about those contracts appear to have been made in July and August 2016, consistent with the allegations of the sworn complaint.
4. Attached hereto as **Exhibits A-D** are true and correct copies of the government’s proposed trial exhibits 701 through 704, which were produced by the government on October 1, 2021, in anticipation of trial, which was then scheduled for November 2, 2021. Each of these exhibits is a Microsoft Outlook note allegedly created by Mr. Smothermon in August 2016.

5. On October 1, 2021, the government also produced proposed trial exhibits 201-211. Each of these exhibits was a contract for the purchase/sale of liquified gas products entered by Trammo's gas subsidiary between November 2015 and July 2016. Based on the allegations in the sworn complaint (Dkt. 3), as well as the discovery produced to date, the government's theory is that Mr. Smothermon directed employees to falsely change the terms of these contracts in Trammo's accounting system in July and August of 2016. The government has not specifically identified for defense counsel any alleged false accounting statements relating to these contracts made prior to May 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 19, 2024  
Houston, Texas



GEORGE D. MURPHY